IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2465 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S T R C

Versus

B J BARAD

Appearance:

1. Special Civil Application No. 2465 of 1989

MR HARDIK C RAWAL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/06/2002

ORAL JUDGEMENT

#. The petitioner - Corporation has challenged the award passed by the Presiding Officer, Labour Court, Bhavnagar in Reference (LCB) No.492/87. By the aforesaid award, the Labour Court has passed the order of reinstatement to his original post without back wages for the intervening period.

#. The respondent workman was subjected to the departmental proceedings as it was found that, he reissued certain tickets to the passengers even though the same were already used. The disciplinary authority, after considering the evidence on record, dismissed him from service. Ultimately, at the instance of the respondent workman the said reference was made to the Labour Court.

#. The Labour Court came to the conclusion that, only from the report of the reporter, it was found by the disciplinary authority that certain erasures were made by the workman with a dishonest intention. It was found by the Labour Court that, no independent witnesses were examined in the departmental proceedings. Ultimately, the Labour Court came to the conclusion that, benefit of doubt is required to be given to the concerned workman and ultimately, the Labour Court granted the benefit of doubt and passed the order of reinstatement to his original post without back wages. The said order is challenged by the petitioner Corporation by filing this petition.

#. At the time of hearing of this petition, it is argued by the learned counsel for the petitioner that the award of the Labour Court is contrary to law. The Labour Court has not considered the fact that, in the departmental proceedings, on the available evidence, once the misconduct is proved, it is not open for the Labour Court to give benefit of doubt to the concerned workman. It is submitted that, there is no concept of giving benefit of doubt in the departmental proceedings. However, it is submitted that the concerned workman is already reinstated in service after the award of the Labour Court.

#. I have gone through the award of the Labour Court and in my view, reasoning of the Labour Court is absolutely unsustainable. The finding of the Labour Court that the benefit of doubt is required to be given to the employee is absolutely unsustainable. In my view, in the departmental inquiry, misconduct is already proved against the workman and without considering the evidence from a proper angle, the Labour Court has committed an error in coming to the conclusion that, benefit of doubt was required to be given to the concerned workman. Since the workman is already reinstated in service since long, now that order is not required to be interfered with. However, in the facts and circumstances of the case, concerned workman is also required to be inflicted some penalty. Ultimately, the order of reinstatement is

confirmed subject to withholding of two increments with future effect. The order of the Labour Court is accordingly modified. It is clarified that the respondent workman shall be entitled to reinstatement without back wages as well as he will be subjected to the penalty of withholding of two increments with future effect. Accordingly, the petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)